

NONJUDICIAL FORECLOSURE AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE**General Description:**

This bill amends provisions of the Condominium Ownership Act and the Community Association Act.

Highlighted Provisions:

This bill:

- ▶ amends terms;
- ▶ prohibits an association of unit owners from enforcing a lien on a unit through nonjudicial foreclosure;
- ▶ prohibits an association from enforcing a lien on a lot through nonjudicial foreclosure; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-8-3, as last amended by Laws of Utah 2017, Chapter 131

57-8-45, as last amended by Laws of Utah 2013, Chapter 95

57-8-48, as enacted by Laws of Utah 2011, Chapter 355



28 **57-8-49**, as enacted by Laws of Utah 2011, Chapter 355
29 **57-8-50**, as enacted by Laws of Utah 2011, Chapter 355
30 **57-8a-102**, as last amended by Laws of Utah 2017, Chapters 131 and 424
31 **57-8a-302**, as last amended by Laws of Utah 2013, Chapter 95
32 **57-8a-305**, as enacted by Laws of Utah 2011, Chapter 355
33 **57-8a-306**, as enacted by Laws of Utah 2011, Chapter 355
34 **57-8a-307**, as enacted by Laws of Utah 2011, Chapter 355

35 REPEALS:

36 **57-8-46**, as enacted by Laws of Utah 2011, Chapter 355
37 **57-8-47**, as enacted by Laws of Utah 2011, Chapter 355
38 **57-8a-303**, as enacted by Laws of Utah 2011, Chapter 355
39 **57-8a-304**, as enacted by Laws of Utah 2011, Chapter 355

41 *Be it enacted by the Legislature of the state of Utah:*

42 Section 1. Section **57-8-3** is amended to read:

43 **57-8-3. Definitions.**

44 As used in this chapter:

- 45 (1) "Assessment" means any charge imposed by the association, including:
46 (a) common expenses on or against a unit owner pursuant to the provisions of the
47 declaration, bylaws, or this chapter; and
48 (b) an amount that an association of unit owners assesses to a unit owner under
49 Subsection **57-8-43**(9)(g).
50 (2) "Association of unit owners" or "association" means all of the unit owners:
51 (a) acting as a group in accordance with the declaration and bylaws; or
52 (b) organized as a legal entity in accordance with the declaration.
53 (3) "Building" means a building, containing units, and comprising a part of the
54 property.
55 (4) "Commercial condominium project" means a condominium project that has no
56 residential units within the project.
57 (5) "Common areas and facilities" unless otherwise provided in the declaration or
58 lawful amendments to the declaration means:

- 59 (a) the land included within the condominium project, whether leasehold or in fee
60 simple;
- 61 (b) the foundations, columns, girders, beams, supports, main walls, roofs, halls,
62 corridors, lobbies, stairs, stairways, fire escapes, entrances, and exits of the building;
- 63 (c) the basements, yards, gardens, parking areas, and storage spaces;
- 64 (d) the premises for lodging of janitors or persons in charge of the property;
- 65 (e) installations of central services such as power, light, gas, hot and cold water,
66 heating, refrigeration, air conditioning, and incinerating;
- 67 (f) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all
68 apparatus and installations existing for common use;
- 69 (g) such community and commercial facilities as may be provided for in the
70 declaration; and
- 71 (h) all other parts of the property necessary or convenient to its existence, maintenance,
72 and safety, or normally in common use.
- 73 (6) "Common expenses" means:
- 74 (a) all sums lawfully assessed against the unit owners;
- 75 (b) expenses of administration, maintenance, repair, or replacement of the common
76 areas and facilities;
- 77 (c) expenses agreed upon as common expenses by the association of unit owners; and
- 78 (d) expenses declared common expenses by this chapter, or by the declaration or the
79 bylaws.
- 80 (7) "Common profits," unless otherwise provided in the declaration or lawful
81 amendments to the declaration, means the balance of all income, rents, profits, and revenues
82 from the common areas and facilities remaining after the deduction of the common expenses.
- 83 (8) "Condominium" means the ownership of a single unit in a multiunit project
84 together with an undivided interest in common in the common areas and facilities of the
85 property.
- 86 (9) "Condominium plat" means a plat or plats of survey of land and units prepared in
87 accordance with Section [57-8-13](#).
- 88 (10) "Condominium project" means a real estate condominium project; a plan or
89 project whereby two or more units, whether contained in existing or proposed apartments,

commercial or industrial buildings or structures, or otherwise, are separately offered or proposed to be offered for sale. Condominium project also means the property when the context so requires.

(11) "Condominium unit" means a unit together with the undivided interest in the common areas and facilities appertaining to that unit. Any reference in this chapter to a condominium unit includes both a physical unit together with its appurtenant undivided interest in the common areas and facilities and a time period unit together with its appurtenant undivided interest, unless the reference is specifically limited to a time period unit.

(12) "Contractible condominium" means a condominium project from which one or more portions of the land within the project may be withdrawn in accordance with provisions of the declaration and of this chapter. If the withdrawal can occur only by the expiration or termination of one or more leases, then the condominium project is not a contractible condominium within the meaning of this chapter.

(13) "Convertible land" means a building site which is a portion of the common areas and facilities, described by metes and bounds, within which additional units or limited common areas and facilities may be created in accordance with this chapter.

(14) "Convertible space" means a portion of the structure within the condominium project, which portion may be converted into one or more units or common areas and facilities, including limited common areas and facilities in accordance with this chapter.

(15) "Declarant" means all persons who execute the declaration or on whose behalf the declaration is executed. From the time of the recordation of any amendment to the declaration expanding an expandable condominium, all persons who execute that amendment or on whose behalf that amendment is executed shall also come within this definition. Any successors of the persons referred to in this subsection who come to stand in the same relation to the condominium project as their predecessors also come within this definition.

(16) "Declaration" means the instrument by which the property is submitted to the provisions of this act, as it from time to time may be lawfully amended.

(17) "Electrical corporation" means the same as that term is defined in Section 54-2-1.

(18) "Expandable condominium" means a condominium project to which additional land or an interest in it may be added in accordance with the declaration and this chapter.

(19) "Gas corporation" means the same as that term is defined in Section 54-2-1.

(20) "Governing documents":

(a) means a written instrument by which an association of unit owners may:

(i) exercise powers; or

(ii) manage, maintain, or otherwise affect the property under the jurisdiction of the association of unit owners; and

(b) includes:

(i) articles of incorporation;

(ii) bylaws;

(iii) a plat;

(iv) a declaration of covenants, conditions, and restrictions; and

(v) rules of the association of unit owners.

(21) "Independent third party" means a person that:

(a) is not related to the unit owner;

(b) shares no pecuniary interests with the unit owner; and

(c) purchases the unit in good faith and without the intent to defraud a current or future lienholder.

(22) "Judicial foreclosure" means a foreclosure of a unit:

(a) for the nonpayment of an assessment;

(b) in the manner provided by law for the foreclosure of a mortgage on real property;
and

(c) as provided in this chapter.

~~[(22)]~~ (23) "Leasehold condominium" means a condominium project in all or any portion of which each unit owner owns an estate for years in his unit, or in the land upon which that unit is situated, or both, with all those leasehold interests to expire naturally at the same time. A condominium project including leased land, or an interest in the land, upon which no units are situated or to be situated is not a leasehold condominium within the meaning of this chapter.

~~[(23)]~~ (24) "Limited common areas and facilities" means those common areas and facilities designated in the declaration as reserved for use of a certain unit or units to the exclusion of the other units.

~~[(24)]~~ (25) "Majority" or "majority of the unit owners," unless otherwise provided in

the declaration or lawful amendments to the declaration, means the owners of more than 50% in the aggregate in interest of the undivided ownership of the common areas and facilities.

~~[(25)]~~ (26) "Management committee" means the committee as provided in the declaration charged with and having the responsibility and authority to make and to enforce all of the reasonable rules covering the operation and maintenance of the property.

~~[(26)]~~ (27) " Management committee meeting" means a gathering of a management committee, whether in person or by means of electronic communication, at which the management committee can take binding action.

~~[(27)]~~ (28) (a) "Means of electronic communication" means an electronic system that allows individuals to communicate orally in real time.

(b) "Means of electronic communication" includes:

(i) web conferencing;

(ii) video conferencing; and

(iii) telephone conferencing.

~~[(28)]~~ (29) "Mixed-use condominium project" means a condominium project that has both residential and commercial units in the condominium project.

(30) "Nonjudicial foreclosure" means the sale of a unit:

(a) for the nonpayment of an assessment; and

(b) in the same manner as the sale of trust property under Sections [57-1-19](#) through [57-1-34](#).

~~[(29)]~~ (31) "Par value" means a number of dollars or points assigned to each unit by the declaration. Substantially identical units shall be assigned the same par value, but units located at substantially different heights above the ground, or having substantially different views, or having substantially different amenities or other characteristics that might result in differences in market value, may be considered substantially identical within the meaning of this subsection. If par value is stated in terms of dollars, that statement may not be considered to reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or fair market transaction at a different figure may affect the par value of any unit, or any undivided interest in the common areas and facilities, voting rights in the unit owners' association, liability for common expenses, or right to common profits, assigned on the basis thereof.

183 ~~[(30)]~~ (32) "Period of administrative control" means the period of control described in
184 Subsection 57-8-16.5(1).

185 ~~[(31)]~~ (33) "Person" means an individual, corporation, partnership, association, trustee,
186 or other legal entity.

187 ~~[(32)]~~ (34) "Property" means the land, whether leasehold or in fee simple, the building,
188 if any, all improvements and structures thereon, all easements, rights, and appurtenances
189 belonging thereto, and all articles of personal property intended for use in connection
190 therewith.

191 ~~[(33)]~~ (35) "Record," "recording," "recorded," and "recorder" have the meaning stated
192 in Chapter 3, Recording of Documents.

193 ~~[(34)]~~ (36) "Rentals" or "rental unit" means:

194 (a) a unit that:

195 (i) is not owned by an entity or trust; and

196 (ii) is occupied by an individual while the unit owner is not occupying the unit as the
197 unit owner's primary residence; or

198 (b) an occupied unit owned by an entity or trust, regardless of who occupies the unit.

199 ~~[(35)]~~ (37) "Size" means the number of cubic feet, or the number of square feet of
200 ground or floor space, within each unit as computed by reference to the record of survey map
201 and rounded off to a whole number. Certain spaces within the units including attic, basement,
202 or garage space may be omitted from the calculation or be partially discounted by the use of a
203 ratio, if the same basis of calculation is employed for all units in the condominium project and
204 if that basis is described in the declaration.

205 ~~[(36)]~~ (38) "Time period unit" means an annually recurring part or parts of a year
206 specified in the declaration as a period for which a unit is separately owned and includes a
207 timeshare estate as defined in Section 57-19-2.

208 ~~[(37)]~~ (39) "Unconstructed unit" means a unit that:

209 (a) is intended, as depicted in the condominium plat, to be fully or partially contained
210 in a building; and

211 (b) is not constructed.

212 ~~[(38)]~~ (40) (a) "Unit" means a separate part of the property intended for any type of
213 independent use, which is created by the recording of a declaration and a condominium plat

that describes the unit boundaries.

(b) "Unit" includes one or more rooms or spaces located in one or more floors or a portion of a floor in a building.

(c) "Unit" includes a convertible space, in accordance with Subsection 57-8-13.4(3).

~~[(39)]~~ (41) "Unit number" means the number, letter, or combination of numbers and letters designating the unit in the declaration and in the record of survey map.

~~[(40)]~~ (42) "Unit owner" means the person or persons owning a unit in fee simple and an undivided interest in the fee simple estate of the common areas and facilities in the percentage specified and established in the declaration or, in the case of a leasehold condominium project, the person or persons whose leasehold interest or interests in the condominium unit extend for the entire balance of the unexpired term or terms.

Section 2. Section 57-8-45 is amended to read:

57-8-45. Enforcement of a lien.

(1) (a) Except as provided in Section 57-8-13.1, to enforce a lien established under Section 57-8-44, an association of unit owners may~~[(i) cause a unit to be sold through nonjudicial foreclosure as though the lien were a deed of trust, in the manner provided by: (A) Sections 57-1-24, 57-1-25, 57-1-26, and 57-1-27; and (B) this chapter; or (ii)]~~ foreclose the lien through a judicial foreclosure in the manner provided by:

~~[(A)]~~ (i) law for the foreclosure of a mortgage; and

~~[(B)]~~ (ii) this chapter.

(b) For purposes of a ~~[nonjudicial or]~~ judicial foreclosure as provided in Subsection (1)(a):

(i) the association of unit owners is considered to be the beneficiary under a trust deed; and

(ii) the unit owner is considered to be the trustor under a trust deed.

(c) An association of unit owners may not enforce a lien established under Section 57-8-44 through nonjudicial foreclosure.

(2) A unit owner's acceptance of the owner's interest in a unit constitutes a simultaneous conveyance of the unit in trust, with power of sale, to the trustee designated as provided in this section for the purpose of securing payment of all amounts due under the declaration and this chapter.

(3) (a) A power of sale and other powers of a trustee under this part and under Sections 57-1-19 through 57-1-34 may not be exercised unless the association of unit owners appoints a qualified trustee.

(b) An association of unit owners' execution of a substitution of trustee form authorized in Section 57-1-22 is sufficient for appointment of a trustee under Subsection (3)(a).

(c) A person may not be a trustee under this part unless the person qualifies as a trustee under Subsection 57-1-21(1)(a)(i) or (iv).

(d) A trustee under this part is subject to all duties imposed on a trustee under Sections 57-1-19 through 57-1-34.

(4) This chapter does not prohibit an association of unit owners from bringing an action against a unit owner to recover an amount for which a lien is created under Section 57-8-44 or from taking a deed in lieu of foreclosure, if the action is brought or deed taken before the sale or foreclosure of the unit owner's unit under this chapter.

Section 3. Section 57-8-48 is amended to read:

57-8-48. One-action rule not applicable -- Abandonment of enforcement proceedings.

(1) Subsection 78B-6-901(1) does not apply to an association of unit owners' judicial [or nonjudicial] foreclosure of a unit under this part.

(2) An association of unit owners may abandon a judicial foreclosure[~~nonjudicial foreclosure~~], or sheriff's sale and initiate a separate action or another judicial foreclosure[~~nonjudicial foreclosure~~], or sheriff's sale if the initial judicial foreclosure[~~nonjudicial foreclosure~~], or sheriff's sale is not complete.

Section 4. Section 57-8-49 is amended to read:

57-8-49. Costs and attorney fees in lien enforcement action.

[(+)] A court entering a judgment or decree in a judicial action brought under Sections 57-8-44 through 57-8-53 shall award the prevailing party its costs and reasonable attorney fees incurred before the judgment or decree and, if the association of unit owners is the prevailing party, any costs and reasonable attorney fees that the association of unit owners incurs collecting the judgment.

~~[(2) In a nonjudicial foreclosure, an association of unit owners may include in the amount due, and may collect, all costs and reasonable attorney fees incurred in collecting the~~

amount due, including the costs of preparing, recording, and foreclosing a lien.]

Section 5. Section **57-8-50** is amended to read:

57-8-50. Action to recover unpaid assessment.

An association of unit owners need not pursue a judicial foreclosure ~~[or nonjudicial foreclosure]~~ to collect an unpaid assessment but may file an action to recover a money judgment for the unpaid assessment without waiving the lien under Section [57-8-44](#).

Section 6. Section **57-8a-102** is amended to read:

57-8a-102. Definitions.

As used in this chapter:

(1) (a) "Assessment" means a charge imposed or levied:

(i) by the association;

(ii) on or against a lot or a lot owner; and

(iii) pursuant to a governing document recorded with the county recorder.

(b) "Assessment" includes:

(i) a common expense; and

(ii) an amount assessed against a lot owner under Subsection [57-8a-405](#)(7).

(2) (a) Except as provided in Subsection (2)(b), "association" means a corporation or other legal entity, any member of which:

(i) is an owner of a residential lot located within the jurisdiction of the association, as described in the governing documents; and

(ii) by virtue of membership or ownership of a residential lot is obligated to pay:

(A) real property taxes;

(B) insurance premiums;

(C) maintenance costs; or

(D) for improvement of real property not owned by the member.

(b) "Association" or "homeowner association" does not include an association created under Title 57, Chapter 8, Condominium Ownership Act.

(3) "Board meeting" means a gathering of a board, whether in person or by means of electronic communication, at which the board can take binding action.

(4) "Board of directors" or "board" means the entity, regardless of name, with primary authority to manage the affairs of the association.

(5) "Common areas" means property that the association:

(a) owns;

(b) maintains;

(c) repairs; or

(d) administers.

(6) "Common expense" means costs incurred by the association to exercise any of the powers provided for in the association's governing documents.

(7) "Declarant":

(a) means the person who executes a declaration and submits it for recording in the office of the recorder of the county in which the property described in the declaration is located; and

(b) includes the person's successor and assign.

(8) "Electrical corporation" means the same as that term is defined in Section 54-2-1.

(9) "Gas corporation" means the same as that term is defined in Section 54-2-1.

(10) (a) "Governing documents" means a written instrument by which the association may:

(i) exercise powers; or

(ii) manage, maintain, or otherwise affect the property under the jurisdiction of the association.

(b) "Governing documents" includes:

(i) articles of incorporation;

(ii) bylaws;

(iii) a plat;

(iv) a declaration of covenants, conditions, and restrictions; and

(v) rules of the association.

(11) "Independent third party" means a person that:

(a) is not related to the owner of the residential lot;

(b) shares no pecuniary interests with the owner of the residential lot; and

(c) purchases the residential lot in good faith and without the intent to defraud a current or future lienholder.

(12) "Judicial foreclosure" means a foreclosure of a lot:

338 (a) for the nonpayment of an assessment; ~~[and]~~
339 (b) ~~[(i)]~~ in the manner provided by law for the foreclosure of a mortgage on real
340 property; and
341 ~~[(ii)]~~ (c) as provided in Part 3, Collection of Assessments.
342 (13) "Lease" or "leasing" means regular, exclusive occupancy of a lot:
343 (a) by a person or persons other than the owner; and
344 (b) for which the owner receives a consideration or benefit, including a fee, service,
345 gratuity, or emolument.
346 (14) "Limited common areas" means common areas described in the declaration and
347 allocated for the exclusive use of one or more lot owners.
348 (15) "Lot" means:
349 (a) a lot, parcel, plot, or other division of land:
350 (i) designated for separate ownership or occupancy; and
351 (ii) (A) shown on a recorded subdivision plat; or
352 (B) the boundaries of which are described in a recorded governing document; or
353 (b) (i) a unit in a condominium association if the condominium association is a part of
354 a development; or
355 (ii) a unit in a real estate cooperative if the real estate cooperative is part of a
356 development.
357 (16) (a) "Means of electronic communication" means an electronic system that allows
358 individuals to communicate orally in real time.
359 (b) "Means of electronic communication" includes:
360 (i) web conferencing;
361 (ii) video conferencing; and
362 (iii) telephone conferencing.
363 (17) "Mixed-use project" means a project under this chapter that has both residential
364 and commercial lots in the project.
365 (18) "Nonjudicial foreclosure" means the sale of a lot:
366 (a) for the nonpayment of an assessment; and
367 (b) ~~[(i)]~~ in the same manner as the sale of trust property under Sections 57-1-19
368 through 57-1-34~~[-and]~~.

~~[(ii) as provided in Part 3, Collection of Assessments.]~~

(19) "Period of administrative control" means the period during which the person who filed the association's governing documents or the person's successor in interest retains authority to:

(a) appoint or remove members of the association's board of directors; or

(b) exercise power or authority assigned to the association under the association's governing documents.

(20) "Rentals" or "rental lot" means:

(a) a lot that:

(i) is not owned by an entity or trust; and

(ii) is occupied by an individual while the lot owner is not occupying the lot as the lot owner's primary residence; or

(b) an occupied lot owned by an entity or trust, regardless of who occupies the lot.

(21) "Residential lot" means a lot, the use of which is limited by law, covenant, or otherwise to primarily residential or recreational purposes.

(22) "Solar energy system" means:

(a) a system that is used to produce electric energy from sunlight; and

(b) the components of the system described in Subsection (22)(a).

Section 7. Section **57-8a-302** is amended to read:

57-8a-302. Enforcement of a lien.

(1) (a) Except as provided in Section **57-8a-105**, to enforce a lien established under Section **57-8a-301**, an association may~~[(i) cause a lot to be sold through nonjudicial foreclosure as though the lien were a deed of trust, in the manner provided by: (A) Sections **57-1-24**, **57-1-25**, **57-1-26**, and **57-1-27**; and (B) this part; or (ii)]~~ foreclose the lien through a judicial foreclosure in the manner provided by:

~~[(A)]~~ (i) law for the foreclosure of a mortgage; and

~~[(B)]~~ (ii) this part.

(b) For purposes of a ~~[nonjudicial or]~~ judicial foreclosure as provided in Subsection (1)(a):

(i) the association is considered to be the beneficiary under a trust deed; and

(ii) the lot owner is considered to be the trustor under a trust deed.

(c) An association may not enforce a lien established under Section 57-8a-301 through nonjudicial foreclosure.

(2) A lot owner's acceptance of the owner's interest in a lot constitutes a simultaneous conveyance of the lot in trust, with power of sale, to the trustee designated as provided in this section for the purpose of securing payment of all amounts due under the declaration and this chapter.

(3) (a) A power of sale and other powers of a trustee under this part and under Sections 57-1-19 through 57-1-34 may not be exercised unless the association appoints a qualified trustee.

(b) An association's execution of a substitution of trustee form authorized in Section 57-1-22 is sufficient for appointment of a trustee under Subsection (3)(a).

(c) A person may not be a trustee under this part unless the person qualifies as a trustee under Subsection 57-1-21(1)(a)(i) or (iv).

(d) A trustee under this part is subject to all duties imposed on a trustee under Sections 57-1-19 through 57-1-34.

(4) This part does not prohibit an association from bringing an action against a lot owner to recover an amount for which a lien is created under Section 57-8a-301 or from taking a deed in lieu of foreclosure, if the action is brought or deed taken before the sale or foreclosure of the lot owner's lot under this part.

Section 8. Section 57-8a-305 is amended to read:

57-8a-305. One-action rule not applicable -- Abandonment of enforcement proceeding.

(1) Subsection 78B-6-901(1) does not apply to an association's judicial ~~[or nonjudicial]~~ foreclosure of a lot under this part.

(2) An association may abandon a judicial foreclosure~~[-nonjudicial foreclosure,]~~ or sheriff's sale and initiate a separate action or another judicial foreclosure~~[-nonjudicial foreclosure,]~~ or sheriff's sale if the initial judicial foreclosure~~[-nonjudicial foreclosure,]~~ or sheriff's sale is not complete.

Section 9. Section 57-8a-306 is amended to read:

57-8a-306. Costs and attorney fees in lien enforcement action.

~~[(+)]~~ A court entering a judgment or decree in a judicial action brought under this part

shall award the prevailing party its costs and reasonable attorney fees incurred before the judgment or decree and, if the association is the prevailing party, any costs and reasonable attorney fees that the association incurs collecting the judgment.

~~[(2) In a nonjudicial foreclosure, an association may include in the amount due, and may collect, all costs and reasonable attorney fees incurred in collecting the amount due, including the costs of preparing, recording, and foreclosing a lien.]~~

Section 10. Section **57-8a-307** is amended to read:

57-8a-307. Action to recover unpaid assessment.

An association need not pursue a judicial foreclosure ~~[or nonjudicial foreclosure]~~ to collect an unpaid assessment but may file an action to recover a money judgment for the unpaid assessment without waiving the lien under Section **57-8a-301**.

Section 11. **Repealer.**

This bill repeals:

Section **57-8-46, Notice of nonjudicial foreclosure -- Nonjudicial foreclosure prohibited if unit owner demands judicial foreclosure.**

Section **57-8-47, Provisions applicable to nonjudicial foreclosure.**

Section **57-8a-303, Notice of nonjudicial foreclosure -- Nonjudicial foreclosure prohibited if unit owner demands judicial foreclosure.**

Section **57-8a-304, Provisions applicable to nonjudicial foreclosure.**